

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
BERNARDO CUETO,

Plaintiff,

-against-

STATE OF NEW YORK, et al.,

Defendants.

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

09-CV-1514(KAM)(ALC)

----- X

MATSUMOTO, United States District Judge:

On April 1, 2009, *pro se* plaintiff Bernardo Cueto ("plaintiff") filed the instant action, pursuant to 42 U.S.C. § 1983, against the State of New York ("defendant"), seeking a judgment by the court declaring unconstitutional Jenna's Law, codified at N.Y. Penal Law § 70.45, and vacating the term of Post Release Supervision ("PRS") to which plaintiff was sentenced pursuant to that law. Before the court is defendant's unopposed motion to dismiss the Complaint. (See ECF No. 24, First Motion To Dismiss the Complaint, filed 12/14/10.)

On August 26, 2011, Magistrate Judge Andrew L. Carter, Jr. issued a Report and Recommendation recommending that the court grant defendant's motion to dismiss, without prejudice to plaintiff maintaining a future action for a federal writ of *habeas corpus* after exhausting his state remedies. (See ECF No. 29, Report & Recommendation, dated 8/26/11.) As explicitly noted at the end of the Report and Recommendation, any objections to the Report and Recommendation were to be filed within fourteen

days of August 26, 2011. (*Id.* at 6.) On September 9, 2011, Magistrate Judge Carter extended the date to file objections to the Report and Recommendation until September 23, 2011. (See Order re Report and Recommendations, dated 9/9/11.) According to a notation entered on the docket sheet, copies of the Report and Recommendation and the court's Order extending the deadline for objections were sent via Federal Express to plaintiff on September 9, 2011. (See Docket Entry, dated 9/9/11.) On September 12, 2011, defendant's counsel mailed another copy of the Report and Recommendation to plaintiff at his address of record. (See ECF No. 30, Declaration of Service, dated 9/12/11.) The period for filing objections has now lapsed, and no objections to Magistrate Judge Carter's Report and Recommendation have been filed.

In reviewing a Report and Recommendation, the district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Where no objection to the Report and Recommendation has been filed, the district court "need only satisfy itself that there is no clear error on the face of the record." *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

Having reviewed Magistrate Judge Carter's well-reasoned

and thorough Report and Recommendation, the record before the court, and the relevant case law, the court finds that there is no clear error in the Report and Recommendation and hereby affirms and adopts the Report and Recommendation in its entirety as the opinion of the court. Accordingly, plaintiff's Complaint is dismissed. This dismissal is without prejudice to plaintiff's right to bring a future action for a federal writ of *habeas corpus*, after he has exhausted his state remedies.

Defendant is directed to serve a copy of this Order on plaintiff and to file a declaration of service by September 27, 2011.

SO ORDERED.

Dated: September 26, 2011
Brooklyn, New York

_____/s/
Kiyo A. Matsumoto
United States District Judge